

AMENDED IN ASSEMBLY AUGUST 5, 2013

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 10, 2013

**SENATE BILL**

**No. 124**

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**Introduced by Senator Corbett**

**(Coauthor: Senator Correa)**

*(Coauthor: Assembly Member Roger Hernández)*

January 18, 2013

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An act to amend Sections 4217.11 and 4217.16 of the Government Code, and to add *and repeal* Section 10780.6 ~~to~~, *of*, and to add *and repeal* Article 7 (commencing with Section 10390) ~~to~~ *of* Chapter 2 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 124, as amended, Corbett. Public contracts: bid preferences: clean energy.

Existing law imposes various requirements with respect to contracting by state agencies and the Trustees of the California State University. Existing law requires state agencies and the Trustees of the California State University to use a competitive bidding process when contracting for goods and services. However, existing law allows a public, *as defined*, agency to award an energy service contract if the governing body determines it is in the best interest of the agency and costs will be reduced, as specified.

This bill would *authorize a public agency, including, but not limited to, the Trustees of the California State University, to award a contract based on the fact that a clean energy device, technology, or system was*

*manufactured in the state if the contract is an energy service contract determined to be in the best interest of the public agency. The bill would, until January 1, 2020, require state agencies and the Trustees of the California State University that accept bids or proposals for a contract for the purchase or installation of a clean energy device, technology, or system, as defined, to provide a 5% preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured in the state, in accordance with specified criteria. This bill would authorize a public agency, including, but not limited to, the Trustees of the California State University, to award a contract based on the fact that a clean energy device, technology, or system was manufactured in the state if the contract is an energy service contract determined to be in the best interest of the public agency. This bill would also, until January 1, 2020, require the Department of General Services to establish a clarification process to ensure that bidders meet the preference criteria and, with respect to the California State University, to publish related information on the departments' Internet Web site.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 ~~(a) California faces the most severe economic downturn since~~
- 4 ~~the Great Depression. Over two million Californians are out of~~
- 5 ~~work, and California's unemployment rate is one of the highest in~~
- 6 ~~the nation.~~
- 7 ~~(b)~~
- 8 ~~(a) At a time of scarce state resources, state purchases should~~
- 9 ~~can be used to stimulate our state economy and put people back~~
- 10 ~~to work.~~
- 11 ~~(c)~~
- 12 ~~(b) The Green Building Executive Order (B-18-12) mandated~~
- 13 ~~that state agencies evaluate the merits of using clean and renewable~~
- 14 ~~onsite energy generation technologies in all new building or large~~
- 15 ~~renovation projects.~~
- 16 ~~(d)~~

1 (c) California has several companies that manufacture clean  
2 energy devices, technology, and systems in the state, employing  
3 Californians and helping our economy.

4 (e)

5 (d) California is the nation's largest *a national leader in creating*  
6 *a clean economy. More than 12,000 clean technology companies*  
7 *call California home and are creating jobs at nearly 10 times the*  
8 *rate of the state's other industries. Many clean technology*  
9 *companies call California home.* A number of these companies  
10 have developed novel technologies, and it is in the interest of the  
11 state to incentivize these companies to establish and grow  
12 manufacturing operations within the state. *This will state, in order*  
13 *to create both construction and permanent manufacturing jobs in*  
14 *California.*

15 (f)

16 (e) It is the intent of the Legislature that a preference should be  
17 allowed for clean energy devices, technology, and systems  
18 manufactured in California.

19 SEC. 2. Section 4217.11 of the Government Code is amended  
20 to read:

21 4217.11. The following terms, whenever used in this chapter,  
22 have the meanings given in this section, except where the context  
23 clearly indicates otherwise:

24 (a) "Clean energy device, technology, or system" means devices  
25 or technologies used for a renewable electrical generation facility,  
26 as defined in paragraph (1) of subdivision (a) of Section 25741 of  
27 the Public Resources Code; a combined heat and power system,  
28 as defined in Section 2840.2 of the Public Utilities Code;  
29 distributed generation and energy storage technologies eligible  
30 under the self-generation incentive program pursuant to Section  
31 379.6 of the Public Utilities Code, as determined by the Public  
32 Utilities Commission; or a facility designed for the production of  
33 renewable fuels the efficient use of which reduces the use of fossil  
34 or nuclear fuels; and energy efficiency devices or technologies  
35 that reduce the need for new electric generation and reduce  
36 emissions of toxic and criteria pollutants and greenhouse gases.

37 (b) "Conservation services" means the electrical, thermal, or  
38 other energy savings resulting from conservation measures, which  
39 shall be treated as a supply of that energy.

1 (c) “Energy conservation facility” means clean energy devices,  
2 technologies, or systems, or conservation measures located in  
3 public buildings or on land owned by public agencies.

4 (d) “Energy service contract” means a contract entered into by  
5 a public agency with any person, pursuant to which the person will  
6 provide electrical or thermal energy or conservation services to a  
7 public agency from an energy conservation facility.

8 (e) “Facility financing contract” means a contract entered into  
9 by a public agency with any person whereby the person provides  
10 financing for an energy conservation facility in exchange for  
11 repayment of the financing and all costs and expenses related  
12 thereto by the public agency. A facility financing contract may  
13 provide for the person with whom the public agency contracts to  
14 provide any combination of feasibility studies for, and design and  
15 construction of, all or part of the energy conservation facility in  
16 addition to the financing and other related services, and may  
17 provide for an installment sale purchase, another form of purchase,  
18 or amortized lease of the energy conservation facility by the public  
19 agency.

20 (f) “Facility ground lease” means a lease of all, or any portion  
21 of, land or a public building owned by, or under lease to, a public  
22 agency to a person in conjunction with an energy service contract  
23 or a facility financing contract. A facility ground lease may include,  
24 in addition to the land on which energy conservation facilities will  
25 be located, easements, rights-of-way, licenses, and rights of access,  
26 for the construction, use, or ownership by the person of the facility  
27 and all related utility lines not owned or controlled by the  
28 interconnecting utility, and offsite improvements related thereto.  
29 A facility ground lease may also include the addition or  
30 improvement of utility lines and equipment owned by the  
31 interconnecting utility that are necessary to permit interconnection  
32 between that utility and an energy conservation facility.

33 (g) “Person” means, but is not limited to, any individual,  
34 company, corporation, partnership, limited liability company,  
35 public agency, association, proprietorship, trust, joint venture, or  
36 other entity or group of entities.

37 (h) “Public agency” means the state, a county, city and county,  
38 city, district, community college district, school district, California  
39 State University, joint powers authority or other entity designated  
40 or created by a political subdivision relating to energy development

1 projects, and any other political subdivision or public corporation  
2 in the state.

3 (i) “Public building” includes any structure, building, facility,  
4 or work which a public agency is authorized to construct or use,  
5 and automobile parking lots, landscaping, and other facilities,  
6 including furnishings and equipment, incidental to the use of any  
7 structure, building, facility, or work, and also includes the site  
8 thereof, and any easements, rights-of-way appurtenant thereto, or  
9 necessary for its full use.

10 SEC. 3. Section 4217.16 of the Government Code is amended  
11 to read:

12 4217.16. Prior to awarding or entering into an agreement or  
13 lease, the public agency may request proposals from qualified  
14 persons. After evaluating the proposals, the public agency may  
15 award the contract on the basis of the experience of the contractor,  
16 the type of technology employed by the contractor, the cost to the  
17 local agency, whether the clean energy device or technology is  
18 manufactured in California, and any other relevant considerations.  
19 The public agency may utilize the pool of qualified energy service  
20 companies established pursuant to Section 388 of the Public  
21 Utilities Code and the procedures contained in that section in  
22 awarding the contract.

23 SEC. 4. Article 7 (commencing with Section 10390) is added  
24 to Chapter 2 of Part 2 of Division 2 of the Public Contract Code,  
25 to read:

26  
27 Article 7. Preference for California-Manufactured Clean Energy  
28 Devices, Technology, and Systems  
29

30 10390. For the purposes of this article:

31 (a) “Clean energy device, technology, or system” means devices  
32 or technologies used for a renewable electrical generation facility,  
33 as defined in paragraph (1) of subdivision (a) of Section 25741 of  
34 the Public Resources Code; a combined heat and power system,  
35 as defined in Section 2840.2 of the Public Utilities Code;  
36 distributed generation and energy storage technologies eligible  
37 under the self-generation incentive program pursuant to Section  
38 379.6 of the Public Utilities Code, as determined by the Public  
39 Utilities Commission; *a solar water heating system, as defined in*  
40 *subdivision (g) of Section 2861 of the Public Utilities Code; or a*

1 facility designed for the production of renewable fuels, the efficient  
2 use of which reduces the use of fossil or nuclear fuels; and energy  
3 efficiency devices or technologies that reduce the need for new  
4 electric generation and reduce emissions of toxic and criteria  
5 pollutants and greenhouse gases.

6 (b) “Power purchase agreement” means a financial arrangement  
7 in which a third-party developer owns, operates, and maintains a  
8 clean energy device, technology, or system, and a state agency  
9 agrees to site the device, technology, or system on its roof or  
10 elsewhere on its property and purchases the device, technology,  
11 or system’s electric output, not the device, technology, or system  
12 itself, from the third-party developer for a predetermined period  
13 of time.

14 10391. (a) A state agency that accepts bids or proposals for a  
15 contract for the purchase or installation of a clean energy device,  
16 technology, or system through a power purchase agreement or a  
17 direct purchase shall provide a preference of 5 percent to a bidder  
18 that certifies that all of the parts of the clean energy device,  
19 technology, or system to be installed have been manufactured in  
20 this state. *The maximum preference a bidder may be awarded*  
21 *pursuant to this article is 5 percent, for that portion of a project*  
22 *that is for the purchase and installation of a clean energy device,*  
23 *technology, or system. The total bid preference resulting from this*  
24 *article and any other provision of law shall not exceed 15 percent.*

25 The preference shall be provided as follows:

26 (1) For solicitations to be awarded to the lowest responsible  
27 bidder meeting specifications, the preference to a bidder that  
28 certifies that all of the parts of the clean energy device, technology,  
29 or system to be installed have been manufactured in this state shall  
30 be 5 percent of the bid price of the lowest responsible bidder  
31 meeting specifications.

32 (2) For solicitations to be awarded to the highest scored bidder  
33 based on evaluation factors in addition to price, the preference to  
34 a bidder that certifies that all of the parts of the clean energy device,  
35 technology, or system to be installed have been manufactured in  
36 this state shall be 5 percent of the total score of the highest scored  
37 bidder.

38 (3) A preference awarded pursuant to paragraph (1) or (2) shall  
39 not be awarded to a noncompliant bidder and shall not be used to  
40 satisfy any applicable minimum requirements.

(4) In order to be eligible for the 5-percent preference authorized pursuant to this section, a bidder shall submit all required substantiating documentation and information needed by the state agency to determine if the bidder is eligible for the preference, including, but not limited to, documentation regarding the identity of the manufacturer of the clean energy device, technology, or system and the location or locations where the parts of the clean energy device, technology, or system will be manufactured.

(5) If, after application of the preferences set forth in this section, more than one bid qualified as the lowest responsible bid or the highest scored bid, the state agency shall award the contract to the bidder that has the highest number of full-time employees who manufacture the parts of the clean energy device, technology, or system in the state when the contract is let.

(b) The Department of General Services shall establish a process to verify that a bidder meets the criteria for the 5-percent preference.

*10392. This article shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.*

SEC. 5. Section 10780.6 is added to the Public Contract Code, to read:

10780.6. (a) For purposes of this section, “clean energy device, technology, or system” means devices or technologies used for a renewable electrical generation facility, as defined in paragraph (1) of subdivision (a) of Section 25741 of the Public Resources Code; a combined heat and power system, as defined in Section 2840.2 of the Public Utilities Code; distributed generation and energy storage technologies eligible under the self-generation incentive program pursuant to Section 379.6 of the Public Utilities Code, as determined by the Public Utilities Commission; *a solar water heating system, as defined in subdivision (g) of Section 2861 of the Public Utilities Code*; or a facility designed for the production of renewable fuels, the efficient use of which reduces the use of fossil or nuclear fuels; and energy efficiency devices or technologies that reduce the need for new electric generation and reduce emissions of toxic and criteria pollutants and greenhouse gases.

(b) The trustees that accept bids or proposals for a contract for the purchase or installation of a clean energy device, technology, or system through a power purchase agreement or a direct purchase shall provide a preference of 5 percent to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured in this state. *The maximum preference a bidder may be awarded pursuant to this section is 5 percent, for that portion of a project that is for the purchase and installation of a clean energy device, technology, or system. The total bid preference resulting from this section and any other provision of law shall not exceed 15 percent.* The preference shall be provided as follows:

(1) For solicitations to be awarded to the lowest responsible bidder meeting specifications, the preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured in this state shall be 5 percent of the bid price of the lowest responsible bidder meeting specifications.

(2) For solicitations to be awarded to the highest scored bidder based on evaluation factors in addition to price, the preference to a bidder that certifies that all of the parts of the clean energy device, technology, or system to be installed have been manufactured in this state shall be 5 percent of the total score of the highest scored bidder.

(3) A preference awarded pursuant to paragraph (1) or (2) shall not be awarded to a noncompliant bidder and shall not be used to satisfy any applicable minimum requirements.

(4) In order to be eligible for the 5-percent preference authorized pursuant to this section, a bidder shall submit all required substantiating documentation and information needed by the trustees to determine if the bidder is eligible for the preference, including, but not limited to, documentation regarding the identity of the manufacturer of the clean energy device, technology, or system and the location or locations where the parts of the clean energy device, technology, or system will be manufactured.

(5) If, after application of the preferences set forth in this section, more than one bid qualifies as the lowest responsible bid or the highest scored bid, the trustees shall award the contract to the bidder that has the highest number of full-time employees who



1 manufacture the parts of the clean energy device, technology, or  
2 system in the state when the contract is let.

3 (c) (1) The Department of General Services shall establish a  
4 process to verify that a bidder meets the criteria for the 5-percent  
5 preference *and publish on its Internet Web site a regularly updated*  
6 *list of all sites that received bid preferences, including the name*  
7 *of the manufacturer and the type of clean energy device,*  
8 *technology, or system utilized.*

9 (2) *The Department of General Services shall annually publish*  
10 *data on its Internet Web site, on the employment growth associated*  
11 *with the clean energy bid preference for women, minority, and*  
12 *disabled veterans.*

13 (d) *This section shall remain in effect only until January 1, 2020,*  
14 *and as of that date is repealed, unless a later enacted statute, that*  
15 *is enacted before January 1, 2020, deletes or extends that date.*